

Order

Entered: July 29, 2002

2002-14

Amendment of Rule 9.128
of the Michigan Court Rules

Michigan Supreme Court Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

By order dated June 4, 2002, this Court published for comment a proposed amendment of Rule 9.128 of the Michigan Court Rules. The order specified a comment deadline of September 1, 2002. The Court now being persuaded of the need for immediate action, the proposed amendment is adopted effective immediately. The Court continues to invite comment regarding the form and the merits of the amendment, however, and will consider at a public hearing whether to retain the amendment. When filing a comment, please refer to file 2002-14. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt. Notice of future public hearings also will be posted at that website address.

[The following language replaces the current
provisions of MCR 9.128 in their entirety.]

Rule 9.128 Costs

- (A) Generally. The hearing panel and the board, in an order of discipline or an order granting or denying reinstatement, must include a provision directing the payment of costs within a specified period of time. Under exceptional circumstances, the board may grant a motion to reduce administrative costs assessed under this rule, but may not reduce the assessment for actual expenses. Reimbursement must be a condition in a reinstatement order.
- (B) Amount and Nature of Costs Assessed. The costs assessed under these rules shall include both basic administrative costs and disciplinary expenses actually incurred by the board, the commission, a master, or a panel for the expenses of that investigation, hearing, review and appeal, if any.
 - (1) Basic Administrative Costs:
 - (a) for discipline by consent pursuant to MCR 9.115(F)(5), \$750;
 - (b) for all other orders imposing discipline, \$1,500;
 - (c) with the filing of a petition for reinstatement under MCR 9.124(A), where the discipline imposed was a suspension of less than 3 years, \$750;

- (d) with the filing of a petition for reinstatement under MCR 9.124(A), where the discipline imposed was a suspension of 3 years or more or disbarment, \$1,500.
- (2) Actual Expenses. Within 14 days of the conclusion of a proceeding before a panel or a written request from the board, whichever is later, the grievance administrator shall file with the board an itemized statement of the commission's expenses allocable to the hearing, including expenses incurred during the grievance administrator's investigation. Copies shall be served upon the respondent and the panel. An itemized statement of the expenses of the board, the commission, and the panel, including the expenses of a master, shall be a part of the report in all matters of discipline and reinstatement.
- (C) Certification of Nonpayment. If the respondent fails to pay the costs within the time prescribed, the board shall serve a certified notice of the nonpayment upon the respondent. Copies must be served on the administrator and the State Bar of Michigan. Commencing on the date a certified report of nonpayment is filed, interest on the unpaid fees and costs shall accrue thereafter at the rates applicable to civil judgments.
- (D) Automatic Suspension for Nonpayment. The respondent will be suspended automatically, effective 7 days from the mailing of the certified notice of nonpayment, and until the respondent pays the costs assessed or the board approves a suitable plan for payment. The board shall file a notice of suspension with the clerk of the Supreme Court and the State Bar of Michigan. A copy must be served on the respondent and the administrator. A respondent who is suspended for nonpayment of costs under this rule is required to comply with the requirements imposed by MCR 9.119 on suspended attorneys.
- (E) Reinstatement. A respondent who has been automatically suspended under this rule and later pays the costs or obtains approval of a payment plan, and is otherwise eligible, may seek automatic reinstatement pursuant to MCR 9.123(A) even if the suspension under this rule exceeded 179 days. However, a respondent who is suspended under this rule and, as a result, does not practice law in Michigan for 3 years or more, must be recertified by the Board of Law Examiners before the respondent may be reinstated.

Staff Comment: The July 29, 2002 amendment of MCR 9.128 was suggested by the Attorney Grievance Commission and the Attorney Discipline Board. It allocates a greater share of the cost of operating the discipline system to those who are disciplined. Among other changes, the new provisions permit an assessment for basic administrative costs as well as actual expenses, and expressly include investigative costs in actual expenses.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.